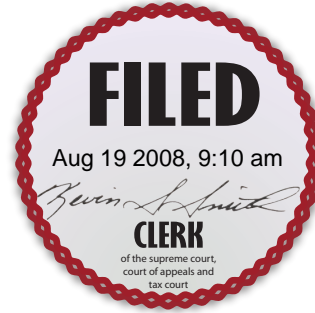


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

FERNANDO A. ROSALES,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A04-0802-CR-93

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
The Honorable Robert J. Schmoll, Magistrate
Cause No. 02D04-0707-FA-47

August 19, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Fernando A. Rosales (“Rosales”) pleaded guilty to Class C felony possession of cocaine. The trial court sentenced Rosales to a term of four years. Rosales appeals and presents the issue of whether his sentence is inappropriate.

We affirm.

Facts and Procedural History

On July 9, 2007, the State charged Rosales with Class A felony dealing in cocaine. On December 11, 2007, Rosales pleaded guilty to Class C felony possession of cocaine after the State had filed an amended information.

On January 4, 2008, the trial court held a sentencing hearing. At the sentencing hearing, Rosales made a statement where he noted the opportunities available in this country that were not available to him in his own country. He also stated, “[I] personal [sic] believe that investigations will prove that I wasn’t personally, directly involved in this situation.” Sent. Tr. p. 7.

The trial court noted that the aggravating circumstances were that he was an illegal alien and that he lacked remorse. The trial court also found that Rosales’s lack of a criminal history was a mitigator. Also, the trial court determined that pleading guilty was not a mitigator because Rosales received a significant benefit from his plea. After the trial court found that the aggravators and mitigators balanced, the trial court sentenced Rosales to the advisory term of four years in the Department of Correction.

Rosales appeals.

Discussion and Decision

Rosales argues that his four-year sentence was inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). Additionally, “[s]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” Id. at 490.

Rosales first argues that the trial court abused its discretion by failing to find the following mitigating circumstances: that the crime neither caused nor threatened to cause serious harm to persons or property, that Rosales accepted responsibility, that he showed remorse, and cooperated with authorities. At sentencing, Rosales failed to argue that the crime neither caused nor threatened to cause harm to persons or property, so that argument is waived on appeal. Burgess v. State, 854 N.E.2d 35, 40 (Ind. Ct. App. 2006). Despite this, the trial court is not required to give mitigating weight to a non-violent crime, so it did not abuse its discretion when it did not consider it a mitigator. Banks v. State, 841 N.E.2d 654, 659 (Ind. Ct. App. 2006).

The trial court determined that the guilty plea was not significant considering the substantial benefit Rosales received by pleading to a Class C felony and not a Class A felony. Also, Rosales does not appear to show much remorse based on his statement that

“I personal believe that investigations will prove that I wasn’t personally, directly involved in this situation.” Sent. Tr. p. 6. Finally, Rosales has not shown that his cooperation should have been considered significant. Although the State acknowledges his cooperation, the State discounts this because of the significant benefit he has received from the guilty plea. Sent. Tr. p. 6. For these reasons, the trial court did not fail to find additional significant mitigators.

Rosales asks that we reweigh the aggravating and mitigating factors. This argument has been rejected by our Supreme Court. Anglemeier v. State, 868 N.E.2d 482, 491 (Ind. 2007) (“Because the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-Blakely statutory regime, a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.”)

Finally, the four-year sentence is not inappropriate in light of the nature of the offense and character of the offender. Rosales was convicted of Class C felony possession of cocaine. The advisory sentence is four years. Rosales received four years despite being in possession of a large amount of cocaine. Although Rosales cooperated with the State, he did receive a significant benefit from pleading guilty and he did not appear to feel any remorse for the possession of the cocaine, seeking to shift blame to others. Accordingly, we conclude that Rosales’s sentence is not inappropriate based on the nature of the offense and the character of the offender.

Affirmed.

BAKER, C.J., and BROWN, J., concur.